The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GAYLE ROBERTA EKSTROM and ROBERT FRANCIS MANNING

Appeal No. 2005-1288
Application No. 09/097,186

ON BRIEF

Before RUGGIERO, BLANKENSHIP, and SAADAT, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-22, which are all the claims in the application.

We reverse.

BACKGROUND

The invention is directed to a system and method of routing, with respect to a plurality of call service centers, both caller-paid and toll-free telephone calls. The system includes a local exchange network and an interexchange network in communication with a call routing processor. Representative claim 1 is reproduced below.

> 1. A system for routing both toll-free and caller-paid telephone calls comprising:
>
> a call service having at least two call service centers;
>
> an interexchange network for handling toll-free telephone calls directed to the call service;
>
> a local exchange network for handling caller-paid telephone calls directed to the call service; and
>
> a call routing processor in communication with the call service centers, the interexchange network, and the local exchange network, wherein the call routing processor is configured to receive status messages from the call service centers and provide individual routing instructions to a respective one of the interexchange network and the local exchange network in response to a routing query to the call routing processor from the respective one of the interexchange network and local exchange network for each call directed to the call service, and wherein the toll-free and caller-paid telephone calls to the call service originating at the interexchange network and the local exchange network are routed to an appropriate service center.

The examiner relies on the following reference:

Crockett	5,590,188	Dec. 31, 1996

Claims 1-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Crockett.

We refer to the Final Rejection (mailed Jul. 16, 2001) and the Examiner's Answer (mailed Jun. 11, 2002) for a statement of the examiner's position and to the Brief (filed Apr. 16, 2002) and the Reply Brief (filed Aug. 15, 2002) for appellants' position with respect to the claims which stand rejected.

OPINION

Claims 1, 7, and 16 are independent. Consistent with the statement of the rejection under 35 U.S.C. § 103 as being unpatentable over Crockett, we will consider claim 1 as representative of the independent claims.

According to the rejection, Crockett describes a switch "being an IXC [interexchange carrier] for handling 800 calls." (Answer at 4). Crockett does not teach the switch as "being an LEC" (presumably, a local exchange carrier). The examiner finds that Crockett teaches a plurality of switches and call centers located in geographically distant locations. The examiner concludes (id.):

> [I]t would [have been] obvious to one skilled in the art to have also allowed the invention of Crockett to interact with an LEC inasmuch as it is well known in the art for companies providing 800/toll-free call center services to also accept local, caller-paid calls, and in some instances even require that locally located customers call the call center using a local number in order to avoid paying for unnecessary 800/toll-free call charges.

The examiner adds, however, that Crockett does not explicitly teach that the "inherent" intelligent peripheral is in communication with the switch via a data and voice/information channel. The examiner finds that such communication "could be" inherent, but at least was well known in the art and would "only be an obvious design choice to one skilled in the art." (Id.)

Appellants argue (Brief at 6) that Crockett fails to disclose or suggest "handling caller-paid calls from local exchange networks or coordinating calls to a call service from both local exchange carriers and interexchange carriers." The examiner notes, in response, Crockett's teaching at column 4, lines 65 through 67 that the switch is conventional and forms no part of the invention. The examiner finds that the statement suggests that a call coming into a call service center or call routing processor may originate from any type of switch. The examiner also notes that text in Crockett, bridging columns 2 and 3, states that the inventive method could be used in any type of telephone switch or network. (Answer at 5-6.) The examiner maintains that it is old and well known for call service centers to receive both toll-free and local, caller-paid calls, submitting the USPTO as an example. (Id. at 7.) As such, "the system of Crockett would still have the ability to handle both types of calls and be in communication with both IXCs and LECs." (Id. at 9.) Appellants respond, in turn, that the examiner may have misinterpreted what is required by the claims. According to

appellants, the USPTO example provided by the examiner may evidence contemplation of a single call service center accessible by two numbers. (Reply Brief at 2-3.)

We agree with appellants that a prima facie case for obviousness has not been established. Crockett teaches, as shown in Figure 1, a call routing processor connected to a switch 14, whereby the switch is connected to one or more call center destinations and the processor routes calls according to predetermined rules. The reference describes toll-free call networks in the "Background of the Invention," similar to the "Background of the Invention" of the instant specification. The specific embodiments of Crockett's invention (col. 9, l. 16 et seq.) consist of interexchange network applications (e.g., toll-free number routing). Even if one were to conclude that the method and apparatus of Crockett would be applicable to a local exchange network for handing caller-paid calls, we find no teaching or suggestion of a call routing processor in communication with call service centers, an interexchange network, and a local exchange network as claimed.

The initial burden of presenting a prima facie case of unpatentability is on the examiner. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). "[T]he Board must assure that the requisite findings are made, based on evidence of record." In re Lee, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). The instant rejection, however, relies on assertions regarding what would have been "inherent" and "obvious," without provision of supporting evidence.

We agree with appellants, for example, that the fact that a call center may receive both toll-free and caller-paid calls does not establish the necessity of a call routing processor as claimed.

> To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient."

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted).

We also disagree with the finding (Answer at 6) that routing calls according to "caller-entered digits" demonstrates that Crockett contemplates calls originating from different networks and switches, "as different dialed digits are used to arrive at the same call routing processor/call service center(s)." The reference, however, distinguishes the called number, the calling number, and "caller-entered digits" (see, e.g. col. 5, ll. 2-12), which appear on this record to be no more than dual tone multi-frequency (DTMF) information as described at the bottom of page 4 of the instant specification.

The principal reason for our not sustaining the rejection, however, is that we simply find no teaching or suggestion, in the evidence provided, of a call routing processor in communication with call service centers, an interexchange network, and a local exchange network as claimed. Cf. In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d

1693, 1697 (Fed. Cir. 2001) (in a determination of unpatentability "the Board must point to some concrete evidence in the record in support of...[the]...findings").

CONCLUSION

The rejection of claims 1-22 under 35 U.S.C. § 103 as being unpatentable over Crockett is reversed.

REVERSED

JOSEPH F. RUGGIERO
Administrative Patent Judge

HOWARD B. BLANKENSHIP
Administrative Patent Judge

MAHSHID D. SAADAT
Administrative Patent Judge

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